

REMARKS

This Response is respectfully submitted in response to the Office Action rendered April 22, 2008. It is timely in view of the Petition for Extension of Time respectfully submitted concurrently herewith. A Request for Continued Examination is also filed concurrently herewith

The Specification has been amended in order to correct inadvertent typographical errors in referring to fatty alcohol components of the formulations as “fatty acids”. Basis for these amendments may be found in the Specification at p. 5, l. 1-2. Claims 12 and 13 have been amended to refer to the compositions of applicants’ invention as “oil-in-water” compositions. Basis for this amendment may be found in the Specification in the examples at p. 15, l. 18 through p. 17, l. 5 as the formulations exemplified therein are inherently “oil-in-water” or “silicone-in-water” compositions. Claims 16 and 17 have been canceled without prejudice in order to expedite prosecution.

The Office Action of April 22, 2008 rejected claims 12-17 under 35 U.S.C. §103(a) as being unpatentable over Su (US 6,287,545) or Michael (US 2001/0043912) or Bertolosso et al. (US 2001/0056048) in view of Schmenger et al. (US 6,528,046). The basis for this rejection is as follows:

Su discloses a hair conditioner composition comprising thickener agent at concentration of about 0.25%, fatty alcohols in a range of about 1%-10%, cationic surfactants in a range of about 0.1%-5%, cationic polymers in a range of about 0.01%-3% and silicones in a range of about 01%-5%...

Michael discloses a hair care composition comprising non-ionic hydrophobic thickener in an amount ranging from 0.02%-1%, fatty alcohols in a range of 1%-10%, cationic surfactant in a range of 0.1%-3%, cationic polymer in a range of 05%-10% and silicon in range of 0.001%-5%...

Bertolosso discloses a hair treatment composition comprising fatty alcohols such as cetyl alcohol, stearyl alcohol and mixtures thereof in a range of 0.01%-10%...cationic surfactants such as cetyltrimethylammonium chloride, behenyl trimethylammonium chloride, cetylpyridinium chloride and thereof in a range of 0.01%-10%...cationic polymers such as polyquaternium-10, polyquaternium 16 and thereof...amino functionalized silicone such as amodimethicone in a range of 0.1 to about 8.0 mole%..., and viscosity modifiers...

Su, Michael or Bertolosso meets the claims limitation as described above but fails to include polyether-1 as a thickener in the composition.

However, Schmenger discloses a hair treatment composition comprising thickener such as polyether-1. The composition can be used as a leave-in hair treatment or as a hair rinse condition the hair and conferring to its gloss and volume... [Office Action, pp. 3-4]

Applicants respectfully request reconsideration of the foregoing rejection in view of the following discussion.

Applicants respectfully note that claims 1-11 have been canceled without prejudice, thus they will address their remarks to pending claims 12-17. With respect to Su, Michael and Bertolosso, as admitted in the Office Action, neither suggests or describes compositions containing polyether-1 as a thickener, thus, applicants respectfully submit that neither would have led one of ordinary skill in the art to the compositions of applicants' invention.

Furthermore, applicants respectfully submit that the Schmenger et al. patent publication does not compensate for the deficiencies of Newell and/or Bertolosso in leading one of ordinary skill in the art to the compositions of applicants' invention. Kindly note that in this response, applicants will hereinafter refer to the Schmenger et al. patent, U.S. Patent Number 6,737,046, which corresponds to the cited WO0152800 publication cited in the Office Action.

Schmenger et al. relates to compositions for hair treatments that contain the following components: "(A) at least one nonionic, amphiphilic associative thickener in an appropriate cosmetic carrier and (B) at least one propellant." [Schmenger et al., col. 2, l. 5-7]. The compositions set forth in Schmenger et al. were intended to avoid the disadvantages of previously-known hair conditioning compositions. As Schmenger et al. points out,

...common hair-conditioning preparations, such as rinse-off treatments or leave-on treatments, are formulated on the basis of aqueous emulsions. Essential ingredients are cationic substances, for example cationic surfactants, hydrophobic substances, for example fatty alcohols, and other oil components...The most important ingredients are the cationic surfactants, fatty alcohols and emulsifiers...The treated hair often feels somewhat heavier and more burdened which is not always desirable... [Schmenger et al., col. 1, l. 15-31]

The solution posed by Schmenger et al. was to combine the components set forth above, i.e., a nonionic, amphiphilic associative thickener and a propellant. Schmenger et al. states that these compositions compare favorably with compositions containing a fatty alcohol, as follows:

Surprisingly, we have now found that the thickener makes it possible to incorporate the cationic substances and the said silicone compound without bringing about the negative side effects of the thickener. **The technical properties of the preparation of the**

invention even exceed those of a conventional hair treatment based on an aqueous emulsion of fatty alcohols and quaternary surfactants. Comparative beauty salon tests performed side by side on the same scalp confirmed the better combability and more natural feel of hair treated with the preparation of the invention. The negative, dull feel of hair treated with fatty alcohol/cationic surfactant mixtures is practically eliminated when the preparation of the invention is used. [Schmenger, et al., col. 2, l. 32-44] (emphasis added)

In contrast, the oil-in-water or silicone-in-water compositions of applicants' invention contain fatty alcohol plus surfactant ingredients, as well as polyether-1, yet *do not require* the presence of propellant in order to achieve the desired results. Applicants respectfully submit that this is unexpected in view of Schmenger et al. in that Schmenger et al. teaches that one *must* include a propellant *in addition to* a nonionic, amphiphilic associative thickener as opposed to fatty alcohol/surfactant mixtures in order to avoid the heaviness associated with earlier compositions. Thus, applicants respectfully submit that the combination of Su, Michael and/or Bertolosso with Schmenger et al. would not have lead one of ordinary skill in the art to the compositions of applicants' invention. Applicants therefore respectfully request reconsideration of the rejection under 35 U.S.C. §103(a) in view of Su, Michael, Bertolosso and Schmenger et al.

In view of the foregoing discussion, applicants respectfully request the reconsideration of the rejections set forth in the Office Action of April 22, 2008. An early allowance is earnestly solicited.

Respectfully submitted,

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